REMARKS

Applicants' representative appreciates the courtesies extended during the in-person interview of January 13, 2009. The amendments and remarks made herein are in accordance with those discussed during the in-person interview.

The Final Office Action, mailed October 15, 2008, considered claims 1-11. Claims 1-2 were rejected under 35 U.S.C. § 102(b) as being anticipated by Donohue (U.S. Patent No. 6,199,204). Claims 4, 6, 7 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Donohue (U.S. Patent No. 6,199,204), in view of McLlroy et al. (U.S. Patent No. 6,701,521). Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable by Donohue (U.S. Patent No. 6,199,204), in view of McLlroy et al. (U.S. Patent No. 6,701,521), and further in view of Slivka et al. (U.S. Patent No. 6,256,668). Claim 11 was rejected under 35 U.S.C. § 103(a) as being Donohue (U.S. Patent No. 6,199,204), in view of McLlroy et al. (U.S. Patent No. 6,701,521), in view of Slivka et al. (U.S. Patent No. 6,256,668) and further in view of Bankay et al. (U.S. Patent No. 5,787,153). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable by Donohue (U.S. Patent No. 6,199,204), in view of McLlroy et al. (U.S. Patent No. 6,701,521), in view of Bankay et al (U.S. Patent No. 5,787,153). [1]

By this amendment, claims 1-11 are amended and claims 12-20 are new. [2] Accordingly, claims 1-20 are pending, of which claims 1, 6, and 11 are the independent claims at issue.

The invention is generally directed to controlling installation update behaviors on a client computer. For example, claim 1 recites a method modifying the normal installation behavior of a computing device during a software update installation. Claim 1 defines obtaining software update information to be installed on the computing device. The software update information comprising a software update, a rule for applicability of the software update, and an installation attribute. The installation attribute indicates that normal installation behavior at the computing device is to be modified for installation of the software update. It is determined that the software update is applicable

[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] Support for the amendments to the claims are found throughout the specification and previously presented claims, including but not limited to paragraphs [0044],[0051]-[0064], [0065]- [0100], [0107], [0116] -[0118] and Figures 2, 3, 8, 9, 10, 11, 14, 15A, and 15B.

to the computing device based on the rule for applicability. In response to the determination, the normal installation behavior at the computing device is modified according to the installation attribute. The software update is installed on the computing device according to the modified installation behavior.

Claim 6 is a computer program product claim corresponding to the method of claim 1.

Applicants respectfully submit that the cited art of record does not anticipate or otherwise render the amended claims unpatentable for at least the reason that the cited art does not disclose, suggest, or enable each and every element of these claims.

Donohue describes distribution of software updates via a computer network. An updater component compares between available software updates and installed software on a local computer system to identify relevant updates. The relevant updates are compared with update criteria. Updates satisfying the update criteria are downloaded and applied. (Col. 4, ll. 14-22, Col. 8, l. 64 – Col. 9, 36). Automatically applying a software update includes installing available software patches and/or upgrade versions in accordance with the predefined update criteria and installation instructions that are downloaded together with the program code required for the update. (Col. 4, ll. 23-28). Available updates can be presented as a plurality of growth paths, and the updater can selected a particular growth path using the update criteria. (Col. 9, ll. 44-47). When required resources are available for installing a growth path, the updater program builds the updates software version. (Col. 9, ll. 61-67). In some embodiments, pre-requisite software is installed before an update is installed. (Col. 13, ll. 22 – 51). However, *Donohue* is silent with respect to using attributes to modify a normal installation behavior.

According, the cited art fails to teach or suggest, either singly or in combination:

> obtaining software update information to be installed on the computing device, the software update information comprising a software update, a rule for applicability of the software update, and an installation attribute, the installation attribute indicating that normal installation behavior at the computing device is to be modified for installation of the software update; and
>
> determining that the software update is applicable to the computing device based on the rule for applicability and in response to the determination:

modifying the normal installation behavior ~~of~~ at the computing device according to the installation attribute; and

installing the software update on the computing device according to the modified installation behavior.

as recited in claims 1 and 6. For at least this reason claims 1 and 6 patentably define over the art of record. For at least this same reason, claims 2-5, 7-10, and 12-16 also patentably define over the art of record. However, many of the dependent claims also independently distinguish over the art of record.

Slivka describes a method for identifying and obtaining computer software updates from a network computer using a tag. In some embodiments, a user chooses a delayed update and provides re-connect information that allows a user computer to re-connect at a more convenient time and complete the download. (Col. 9, ll. 8-12). The logon method for the delayed update can change upon reconnection, for example, switching from modem to network connection. (Col. 9, ll. 26-33). To implement delayed downloading, an update service application uses information provided at an earlier time. (Col. 9, ll. 44-50). The different access method can be chosen to provide the greatest bandwidth transfer rate. (Col. 9, ll. 58-62). Thus, *Silvka* describes mechanisms that to delay when a download is completed. However, this does not address the need for installing priority updates in a timely manner. Thus, the cited art fails to teach or suggest either singly or in combination "modifying the standard download behavior to permit the download process downloading the software update to compete with other network activities on a current connection so that as much network bandwidth as possible is used when downloading the software update's content so as to download the software update more quickly over the current connection", as recited in claims 3 and 8. For at least this further reason, claims 3 and 8 patentably define over the art of record.

McLlroy describes modular configuration and distribution of applications customized for a requestor device. A user can specify when an update is to be installed. For instance, a user may specify a period of time that must expire before the update is installed. (Col. 20, ll. 36-35). That is the update can not be installed prior to expiration of the specified period. Further, after expiration of the specified time, installation of the update is permitted but there is no indication that installation of the update is mandatory. That is, expiration of the specified period of does not mandate installation of a software update it merely allows it to occur. Thus, the cited art fails to teach or suggest either singly

or in combination "in response to the determination, requiring the software update to be installed on the computing device and modifying the standard user-interface behavior to automatically install the software update without further user interaction", as recited in claims 4 and 9. For at least this further reason, claims 4 and 9 patentably define over the art of record.

Bankay describes a system for incremental redistribution of telephony applications computing workload. *Bankay* provides general statistical information on how many users might detect a service interruption based on the length of the service interruption. (Col. 2, ll. 50 – Col. 3, ll.5). However, *Bankay* does not describe determining if a computer system is configured for specified types of updates. Thus, the cited art fails to teach or suggest either singly or in combination "determining that the computing device is configured for automatic installation of ZSI software updates, and in response to the determination, automatically installing the software update without further user interaction", as recited in claims 5 and 10.

As such, Applicants also submit that claim 11 also patentably defines over the art of record at least for any of the previously identified reasons.

Further, the cited art is silent with respect to client authentication. Thus, the cited art also fails to teach or suggest either singly or in combination the limitations of claims 12 and 17.

Additionally, the cited art is silent with respect to traversing an update hierarchy. *Donohue* does mention detection of pre-requisites. (Col. 13, ll. 22-51). However, this requires a chain of network communication updater requests between a plurality of different updaters. Thus, the cited are also fails to teach or suggest either singly or in combination the limitations of claims 14 and 19.

In view of the foregoing, Applicant respectfully submits that all the rejections to the independent claims are now moot and that the independent claims are now allowable over the cited art, such that any of the remaining rejections and assertions made, particularly with respect to all of the dependent claims, do not need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice, and particularly with regard to the dependent claims.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; and/or (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefore and charge any additional fees that may be required to Deposit Account No. 23-3178.

Dated this 15th day of January, 2009.

Respectfully submitted,

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